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for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC and
the estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff,

Plaintiff,

v.

FEDERICO CERETTI, *et al.*

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01161 (SMB)

APPLICATION FOR THE ISSUANCE OF LETTER OF REQUEST

1. Plaintiff Irving H. Picard, as trustee (“Trustee”) for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), which has been substantively consolidated with the estate of Bernard L. Madoff, through his attorneys, Baker & Hostetler LLP, submits this application for the issuance of a Letter of Request to the Royal Courts of Justice for the examination of United Kingdom resident, Mr. Abdallah Rahall.

2. This application is made pursuant to 28 U.S.C. § 1781, this Court’s inherent authority, and in light of the comity between the United States and the United Kingdom. Service will be effected pursuant to the Hague Service Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents (the “Hague Service Convention”), to which the United States and the United Kingdom are signatories.

3. Mr. Rahall is a foreign citizen and non-party located in London, England. Thus, the Letter of Request provides the only means of compelling discovery from him.

FACTUAL BACKGROUND

Madoff’s Ponzi Scheme

4. Bernard L. Madoff (“Madoff”), through the investment advisory business of BLMIS, conducted a decades-long Ponzi scheme of breath-taking scale. (Fourth Amended Complaint ¶ 1).

5. His fraud was sustained by infusions from around the globe. In particular, domestic and foreign investment vehicles colloquially known as “feeder funds” injected several billions of dollars into his scheme. (*Id.*).

6. Included among these feeder funds were Kingate Global Fund, Ltd., In Liquidation (“Kingate Global”) and Kingate Euro Fund, Ltd., In Liquidation (“Kingate Euro” and with the

“Kingate Funds”). (*Id.*).

7. Federico Ceretti (“Ceretti”) and Carlo Grosso (“Grosso”) founded the Kingate Funds. Ceretti and Grosso formed an important part of Madoff’s *de facto* global sales force, marketing BLMIS to European investors.

8. Since their inception, the Kingate Funds deposited a combined total of approximately \$1.7 billion with BLMIS and over time withdrew nearly a billion dollars from BLMIS. These withdrawn funds comprise customer property and constitute avoidable transfers under the United States Bankruptcy Code that the Trustee seeks to recover for equitable distribution. (*Id.* ¶¶ 2-3).

9. Ceretti and Grosso structured the Kingate Funds with management companies that they also directly or beneficially owned and controlled. (*Id.* ¶¶ 54-71). In 1994, Ceretti and Grosso established the nominal management company, Kingate Management Limited (“KML”), purportedly as a management vehicle but which in practice assigned its management responsibilities to FIM Limited and its affiliate, FIM Advisers LLP (“FIM Advisers” and with FIM Limited, “FIM”). Together, KML and FIM (collectively, the “Kingate Managers”) purported to “advise,” “consult,” and “manage” the Kingate Funds. (*Id.* ¶¶ 4-5).

Mr. Rahall’s Connection to the Kingate Funds

10. This Application concerns the examination under oath of Mr. Rahall.

11. As part of the Trustee’s ongoing investigation, and pursuant to the Order of Register Barber dated 22 July 2011, the Trustee’s counsel spoke with Mr. Rahall about matters relating to his employment at FIM and FIM’s relationship with the Kingate Funds (the “Interview”).

12. Mr. Rahall provided the Trustee with information directly relevant to the Trustee’s allegations in the Fourth Amended Complaint.

13. On September 5, 2011, following the Interview, Mr. Rahall signed a witness statement detailing his knowledge (the “Witness Statement”) and stating that the contents of the Witness Statement are true. A copy of the Witness Statement is attached hereto as Exhibit A.

14. Through this Letter of Request, the Trustee seeks to obtain this same information from Mr. Rahall in an evidentiary form that would be more readily admissible in the United States Bankruptcy Court. The Trustee’s questions would largely be limited to the information provided in Mr. Rahall’s Witness Statement.

15. FIM Limited was established in 1981 by Grosso as an asset manager for high net worth individuals. (*Id.* ¶ 35, 49). Ceretti joined FIM Limited in 1986. In the early 1990s, FIM Limited’s business focused on managing funds of funds. (*Id.* ¶ 5, 51, 104). In 2004, Ceretti and Grosso co-founded FIM Advisers and in August 2005 FIM Advisers took over the business of FIM Limited. (*Id.* ¶ 36, 52).

16. In 1995, FIM Limited was appointed by KML and Kingate Global to provide consulting services to Kingate Global, and later Kingate Euro. (*Id.* ¶¶ 5, 51, 112). FIM Advisers replaced FIM Limited in 2005. (*Id.* ¶ 112). In addition to acting as consultant, at least twelve of FIM’s investment funds were invested in the Kingate Funds. (*Id.* ¶ 53).

17. FIM had a robust due diligence process and marketed itself to the public accordingly. (*Id.* ¶¶ 122-27). The Kingate Funds were among those listed in FIM’s reports as being funds for which FIM was responsible. (*Id.* ¶ 53).

18. The FIM funds’ investments into the Kingate Funds should have also included due diligence on the Kingate Funds and BLMIS. The diligence is relevant to these proceedings because it would reflect cumulative knowledge that can be imputed to the Kingate Funds via Ceretti and Grosso.

19. Mr. Rahall is a financial professional, with significant experience in the financial industry. (Witness Statement ¶¶ 3, 5).

20. Mr. Rahall joined FIM Limited in February of 2005. (*Id.* ¶ 1). At FIM Limited, and later FIM Advisers, as a senior investment analyst on the investment team, Mr. Rahall performed due diligence on FIM's funds. (*Id.* ¶¶ 5-6). As such, the Trustee anticipates that Mr. Rahall will have important and specific knowledge about the following topics.

21. Mr. Rahall has direct knowledge about the due diligence performed by FIM on the Kingate Funds. (*Id.* ¶¶ 6, 8-10).

22. Mr. Rahall also has direct knowledge about the information collected and stored on each of the FIM funds. (*Id.* ¶¶ 16-17).

23. Mr. Rahall has direct knowledge regarding the extent to which these due diligence processes were treated differently from the other FIM funds. (*See e.g., id.* ¶¶ 22-23).

24. Mr. Rahall's role in FIM's due diligence makes it clear that Mr. Rahall has direct knowledge pertaining to several allegations in the Fourth Amended Complaint.

25. Mr. Rahall's knowledge and documents are essential to the prosecution of the Trustee's claims in this adversary proceeding.

26. Specifically, the Trustee anticipates that Mr Rahall will be able to provide further information in relation to the issues and allegation contained in paragraphs 4, 5, 7, 49, 50, 51, 52, 53, 101, 104, 110, 112, 115-118, 120, 122-134, 137-141, 146-241 of the Fourth Amended Complaint.

27. For the above reasons, the Trustee believes that the Proposed Letter of Request is just and appropriate, and respectfully requests that the Court issue such Letter of Request to the indicated Judicial Authority.

Dated: New York, New York
January 26, 2018

Respectfully submitted,

/s/ Gonzalo S. Zeballos

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